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UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

Ervin Middleton, Jr.,

Petitioner

v.

Mark Stevens,

Respondent

Case No.: 2:20-cv-00860-JAD-NJK

**Order Dismissing Improperly  
Commenced Petition  
Without Prejudice**

Petitioner Ervin Middleton, Jr., filed this *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2241. It appears from his allegations that petitioner was cited for some traffic-law violations, and the Henderson Municipal Court issued an arrest warrant for his failure to appear.<sup>1</sup> Because petitioner filed this action without paying the filing fee or submitting an application to proceed *in forma pauperis*, this case has been improperly commenced and must be dismissed on that basis.<sup>2</sup> If petitioner desires to proceed with such an action, he will need to file a new action and either pay the full filing fee or submit a proper *in forma pauperis* application.

It does not appear from the papers that a without-prejudice dismissal will materially affect a later analysis of any timeliness issue with regard to a new, timely filed action. Indeed, it does not appear from the papers that a state court has issued a judgment of conviction against petitioner, and thus the statute of limitations would be inapplicable.<sup>3</sup> Petitioner at all times

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<sup>1</sup> ECF Nos. 1-1, 1-2, 4-1.

<sup>2</sup> 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2.

<sup>3</sup> See 28 U.S.C. § 2244(d).

1 remains responsible for calculating applicable federal limitation periods and for properly  
2 commencing a timely filed federal habeas action.

3 IT THEREFORE IS ORDERED that the Clerk is directed to DETACH AND FILE the  
4 petition [ECF No. 1-1 and 1-2].

5 IT FURTHER IS ORDERED that **this case is DISMISSED** without prejudice to the  
6 filing of a new action with either the full filing fee or a properly completed *in forma pauperis*  
7 application.

8 IT FURTHER IS ORDERED that **a certificate of appealability is DENIED** because  
9 jurists of reason would not find the court's dismissal of this improperly commenced action  
10 without prejudice to be debatable or incorrect.

11 The Clerk of Court is directed to ENTER JUDGMENT accordingly and close this case.

12 Dated: May 31, 2020

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15 U.S. District Judge  
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